

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK**

CEDRIC REID,

Plaintiff,

9:12-CV-0533 (TJM/DEP)

v.

G. DONALD, et al.,

Defendants.

THOMAS J. McAVOY
Senior United States District Judge

DECISION and ORDER

I. INTRODUCTION

This pro se action brought pursuant to 42 U.S.C. § 1983 was referred by this Court to the Hon. David E. Peebles, United States Magistrate Judge, for a Report and Recommendation pursuant to 28 U.S.C. § 636(b) and Local Rule N.D.N.Y. 72.3(c). In his August 29, 2013 Report and Recommendation, Magistrate Judge Peebles recommends that Defendants' motion to dismiss (Dkt. No. 37) be GRANTED, and that Plaintiff's complaint be DISMISSED, but that Plaintiff be granted leave to replead solely as it relates to his retaliation claim against defendant Donald, and, by extension, his supervisory liability claims against defendants Schattinger, Haponik, McCarthy, Murray, Lindquist, and Matasar. Plaintiff has filed objections to the Report and Recommendation.

II. STANDARD OF REVIEW

When objections to a magistrate judge's report and recommendation are lodged, the district court makes a "*de novo* determination of those portions of the report or

specified proposed findings or recommendations to which objection is made.” See 28 U.S.C. § 636(b)(1)(C); see also United States v. Male Juvenile, 121 F.3d 34, 38 (2d Cir.1997)(The Court must make a *de novo* determination to the extent that a party makes specific objections to a magistrate's findings.). “[E]ven a *pro se* party's objections to a Report and Recommendation must be specific and clearly aimed at particular findings in the magistrate's proposal, such that no party be allowed a second bite at the apple by simply relitigating a prior argument.” Machicote v. Ercole, 2011 WL 3809920, at * 2 (S.D.N.Y., Aug. 25, 2011)(citations and interior quotation marks omitted); DiPilato v. 7-Eleven, Inc., 662 F. Supp.2d 333, 340 (S.D.N.Y. 2009)(same).

General or conclusory objections, or objections which merely recite the same arguments presented to the magistrate judge, are reviewed for clear error. Farid v. Bouey, 554 F. Supp. 2d 301, 306 n. 2 (N.D.N.Y. 2008); see Frankel v. N.Y.C., 2009 WL 465645 at *2 (S.D.N.Y. Feb. 25, 2009). After reviewing the report and recommendation, the Court may “accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge. The judge may also receive further evidence or recommit the matter to the magistrate judge with instructions.” 28 U.S.C. § 636(b)(1)(C).

III. DISCUSSION

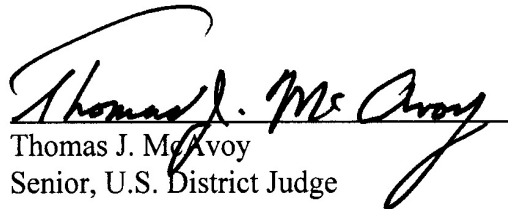
Plaintiff’s objections raise the same equitable tolling arguments addressed and rejected by Magistrate Judge Peebles. Upon *de novo* review, the Court rejects the arguments for the same reasons as discussed by Magistrate Judge Peebles. See Rep. Rec. pp. 18-22.

IV. CONCLUSION

Accordingly, the Court **ADOPTS** the Report and Recommendation [dkt. # 42] for the reasons stated therein. Defendants' motion to dismiss [dkt. # 37] is **GRANTED**, and Plaintiff's complaint is **DISMISSED**, but Plaintiff is granted to leave to replead solely as it relates to his retaliation claim against Defendant Donald and his supervisory liability claims against Defendants Schattinger, Haponik, McCarthy, Murray, Lindquist, and Matasar on this retaliation claim. Plaintiff must replead within forty-five (45) days of the date of this Decision and Order. His failure do so will result in dismissal of all claims without further order of the Court.

IT IS SO ORDERED.

Dated: September 27, 2013


Thomas J. McAvoy
Senior, U.S. District Judge